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CPM Project
Registration for
Dry Cleaning Facility
Restoration Trust Fund

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STATE DOCUMENTS

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I. INTRODUCTION

The South Carolina Legislature passed House Bill 3907 effective July 1, 1995 which created the Dry Cleaning Facility Restoration Trust Fund. The intent of the Trust Fund is to allow for the remediation of dry cleaning sites contaminated by dry cleaning solvents. Eligible facilities are required to register with the South Carolina Department of Revenue ("DOR") by paying a yearly fee based on number of employees. The Fund is administered and disbursed by the South Carolina Department of Health and Environmental Control ("DHEC") and assists dry cleaning facilities with restoration and remediation costs of contaminated sites.

The original version of the law was not clearly written in that it appeared to allow certain facilities to not participate or to "opt out" of the registration for the Trust Fund. In many cases, facilities exercised an option to not participate when they had a legal requirement to register and participate in the Trust Fund. Consequently, the Trust Fund was determined to be under funded when a comparison was made between potential restoration liability and the available funds. Based on this status of the Fund, the law was amended by Act No. 237 (Senate Bill 487) on May 4, 2004 to allow another opportunity for dry cleaners to register for Trust Fund as well as the implementation of a 1% surcharge on sales from a participating facility. The applicable law is found in South Carolina Code Sections 44-56-410 through 44-56-485 (see Attachment #1, pages 12 through 25). The terms and definitions associated with this Project can be found in South Carolina Code Section 44-56-410 (see Attachment #1, pages 12 through 13).

The amendment to the law requires DOR to do the following:

1. Identify all dry cleaners;
2. Notify those dry cleaners not currently participating in the Trust Fund of the amendment to the law;

3. Insure that those dry cleaners that are required to register (no “opt-out” provision) have done so; and
4. Insure that all participating dry cleaners are remitting the appropriate fee.

The central question surrounding the correct application of the law is:

“How do we insure that all dry cleaners that are required to register for Fund are indeed registered?”

The answer to this question will be found by a comparison of the current registrants for the Trust Fund to a cumulative listing of all dry cleaning businesses as registered for sales tax. The comparison will identify those businesses that must be contacted for possible registration in the Trust Fund.

The purpose of this project is to identify those dry cleaning facilities that should be registered for the Dry Cleaning Facility Restoration Trust Fund and to suggest actions that should be taken in order to insure their registration. If the facilities are properly registered, the Fund will be more sufficiently funded and DHEC will have a better opportunity for the restoration of contaminated sites. The proper registration of dry cleaners will more equitably distribute the current cost of the Trust Fund across the industry.

II. INFORMATION SOURCES

The documents that will be used as information sources in this project are:

1. South Carolina Code of Laws – Attachment #1, pages 12 through 25.
2. Letter of Explanation – August 26, 2004 – Attachment #2, pages 26 through 30.
3. ACCESS Files of Sales Tax registrations and Trust Fund Participant information
4. Industry description information from the Employment Security Commission.

5. Responses to August 26 letter

The main sources of information are files concerning the Sales Tax registrations and the current Trust Fund participant information. This information is already known and is available by an "on-request" transcript program that searches the DOR Business Registration system.

III. METHODOLOGY

In order to complete the project, it was necessary to obtain the following information:

1. Is facility a current participant in the Trust Fund?

This information provides the locations that are subject to Trust Fund fees, the per/gallon surcharge and the new 1% Surcharge. By default, the information also shows the locations that need to be contacted for potential registrations.

2. Does facility use solvent? If so, what kind?

Locations that use Halogenated solvent (brand name is "Perchloroethylene") must participate in the Fund. Locations that use Non-halogenated solvents have an option to participate if the location was in operation prior to July 1, 1995.

3. What is the Opening Date?

If the location opened after July 1, 1995 and uses any solvent, location must participate in the Fund.

We collected the necessary information in the following manner:

1. Review Sales Tax Accounts

A retail license is required for all dry cleaners. We obtained an ACCESS file of all sales tax accounts issued to Dry Cleaning Industry code of "812320" as well as an ACCESS file of all existing participants in the Trust Fund. Both files included all demographic data on the locations including physical location and opening date. We

compared the two (2) lists and removed the participant locations from the list of sales tax accounts prior to mailing the letter explaining the amendments to the Trust Fund.

2. Solvent Type

We added a field on the Form L-2093, Dry Cleaning Facility Registration Application, which requests information from the facility concerning the solvent used at the location.

3. Employee Withholding Registration / Employment Security Registration.

We made a comparison of registration information with SC Employment Security Commission data to DOR Retail license data. Comparison resulted in 52 retail accounts being corrected to show industry description as dry cleaner. Total number of employees shown in SC Employment Security Commission database reflects employees of a single owner not a single location so the information from the SC Employment Security Commission concerning number of employees would have been of minimal value.

4. DHEC

DHEC has provided a list of locations that have received disbursements from Fund in order to verify that location is in compliance with payments to Trust Fund.

Responses to letter of August 26 are tracked in an ACCESS file. Queries are performed in ACCESS in order to identify locations that have received information but have not responded with requested information. The file is also used to track those locations that we cannot confirm receipt of information. The file contains other information on locations such as type of solvent, Open Date and signature of recipient. We did not include number of employees at each location because of lack of verification. The records of the Employment Security Commission as well as DOR track employees by ownership, not location.

IV. RESULTS AND FINDINGS

A total of 516 letters were mailed to locations identified as dry cleaning businesses on August 26, 2004. Three (3) additional letters have been mailed since August 26, 2004 to new businesses opening as dry cleaners. These totals do not include the dry cleaning facilities that have previously registered as participants in the Trust Fund. We have had the following results:

1. Number of new participants

As of January 25, 2005, a total of 16 locations had registered as new participants in the Trust Fund. Also, five (5) businesses were determined to be already participating in the Trust Fund. These five letters were mailed incorrectly due to a discrepancy in the location address.

2. Number of non-participation elections

As of January 25, a total of 178 locations had elected to “opt-out” of participation in the Trust Fund and were found to be legitimate non-participants.

3. Number of outstanding letters

As of January 25, 258 letters are outstanding. We can verify by the signed Certified Mail receipt that the location has received the information but we have received no additional response. We have begun to make a second contact with these locations in an effort to insure the proper registration. The second notice (Attachment #3, pages 31 through 32) explains that the location must notify DOR of the election in order to be properly registered – either as a participant or a valid non-participant.

4. Incorrect Mailing Address

As of January 25, we have received 15 returned letters and have attempted to contact that owner/operator at a corrected or secondary address.

5. Open Date

As of January 25, 3 locations have attempted to "opt-out" of the Trust Fund but were denied this election due to an opening date after July 1, 1995. These locations have been notified that they are required to participate in the Trust Fund and that they must provide the appropriate registration form with remittance.

6. Type of Solvent

As of January 25, 5 locations have attempted to "opt-out" of the Trust Fund but were denied this election due to their use of the Halogenated dry cleaning solvent. These locations have been notified that they are required to participate in the Trust Fund and that they must provide the appropriate registration form with remittance.

7. Incorrect Business Description

As of January 25, 30 locations have responded that the Department of Revenue had an incorrect business description. The incorrect descriptions included coin-operated laundromats (21), Wholesale laundries (1), Alterations (1) and other categories (5). These locations were contacted in error.

8. Business Closed

As of January 25, 9 businesses that received letters were determined to be closed.

9. Solvent Supplier

Based on the election forms received from the dry cleaning locations, we have contacted a dry cleaning solvent supplier that is not currently registered. The supplier has not paid the required surcharge that is calculated on the number of gallons sold in South Carolina

In a review of the results, we find that the dry cleaning industry is not in agreement with the intent or wording of law. Small operators feel as though the law favors the large facilities by

disproportionately calculating the fee based on number of employees. Industry does not agree with the additional 1% Surcharge nor does the industry understand the combination of the 1% surcharge, the per/gallon fee on the solvent and the Trust Fund fees. After the adoption of the amendment to the law and prior to receipt of August letter, many cleaners felt as though the 1% Surcharge was replacing the Trust Fund fees.

Many owner/operators do not understand the relationship between their current status and the status of a former owner/operator. A current owner/operator of locations may face liability for Trust Fund because of the inaction of prior owner - the current owner/operator is the responsible party in the case of liability for restoration costs. Also, if the location was registered as a participant under a prior owner/operator and the current owner/operator uses solvent, the location must remain as a participant in the Trust Fund

Inconsistent interpretation and implementation of original law in 1995 by DOR and DHEC led some locations to incorrectly "opt-out" of the Trust Fund in 1995. Main confusion revolved around the fact that the locations that used Halogenated (perchloroethylene) solvents were thought to have the option to not participate in the Fund. This was incorrect – all users of Halogenated solvents are required to participate in the Trust Fund.

Many facilities contacted in 1995 after the adoption of the original version of the law never responded to that initial request. During the current contact we are issuing follow-up letters in order to insure proper registration.

V. SUMMARY AND CONCLUSIONS

Based on the results and findings shown above, the following recommendations are made in order to insure the success of the Trust Fund:

1. We suggest that DOR automate delinquency tracking and the issuance of outstanding balance notices for the Trust Fund as well as the 1% Surcharge. This suggestion would result in the timely issuance of delinquent and balance due notices which would maintain the correct flow of payments into the Trust Fund.
2. We have already suggested and completed the implementation of the automation of the notification of new dry cleaning facilities. As of the current date, the Registration processing system at DOR automatically mails a letter to a new dry cleaning facility of the potential requirement to join the Trust Fund and remit the 1% Surcharge.
3. We suggest that the law be simplified. The industry as a whole may accept the necessity of the Trust Fund if the liability was more evenly distributed across the entire industry. This may be accomplished by the application of the current fee schedule to all dry cleaning locations or the assessment of the 1% Surcharge to all dry cleaning locations. Each option assumes that all locations would be required to participate and there would be no "opt-out" options. The obvious difficulty with this suggestion is to determine how to treat those facilities that would be required to register currently even though they may have legally "opted-out" of the Trust Fund. A comparison of these two options reveals the following information:

o Current Participation:

Total Payments to Trust Fund FY2005 ¹	\$197,746.25
Total 1% Surcharge payments FY2005 ²	\$232,876.89
Total Per/Gallon Surcharge FY2005 ³	\$211,384.00

Annualized payments based on 52 weeks:

¹ Actual dollars collected and applied to Dry Cleaning Trust Fund per Department of Revenue database to date

² Actual dollars collected and applied to 1% Surcharge per Department of Revenue database to date

³ Actual dollars collected and applied to Gallon surcharges per Department of Revenue database to date

Annualized Trust Fund Payments FY2005 ¹	\$276,739.00
Annualized 1% Surcharge payments FY2005	\$465,754.00
Annualized Per/Gallon payments FY2005	\$407,108.00
Anticipated Total Payments to Trust Fund FY2005	\$1,149,601.00

- Option 1 - Trust Fund registration applied to all locations(762):

Estimated fees based on \$750.00 per location	\$571,500.00
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(all locations included – 762 X \$750 current minimum fee)

- Option 2 - 1% Surcharge applied to Gross Sales of all locations:

Gross Sales – FY2004 – Industry – 762 locations ²	\$117,411,882.51
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1% Surcharge – Gross Sales – Estimated	\$1,174,118.82
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The comparison shows that Option 1, the Trust Fund fee applied to all locations, would deliver a lower total amount than the current fee structure combination (\$571,500.00 vs \$1,149,601.00). This option would consequently be counter-productive. Industry may be more inclined to delete the Trust Fund fee as well as the per/gallon surcharges on halogenated and non-halogenated solvents and make all dry cleaning sales subject to the 1% Surcharge (Option 2). This option would result in a greater amount of funding for the Trust Fund (\$1,174,448.82 vs \$1,149,601.00) and would significantly reduce administrative costs to the DOR. DOR would no longer be required to administer and collect the Trust Fund fees and the per/gallon surcharges. It is imperative to realize that this option would be applied to all locations with no “opt-out” provision.

¹ Calculation based on majority of Trust Funds being paid in August and September plus 16 new registrants

² Information based on actual gross sales inquiry by Industry code

4. In the future, DHEC should consider the creation of a permit to operate a dry cleaning facility that would be required of all dry cleaning facilities. If approved and issued by DHEC, DHEC could insure that location has all necessary containment dikes and structures as required in Code Section 44-56-470 (Attachment #1, pages 20 through 22) . The collection of an appropriate fee for the permit to operate could potentially replace the 1% Surcharge. The fee could be based on the use or non-use of solvent at the location but all locations would be subject to the permit fee. A fee applied to all locations may be more acceptable to the Industry than a 1% Surcharge that is only applied to those locations that participate in the Trust Fund. This suggestion has been discussed with the Site Assessment Section of DHEC and, in the current industry environment, they do not feel as though this suggestion is “workable”. The current law does not provide the funding or manpower for the creation of a new permitting process.
5. We suggest that DOR notify DHEC when a new dry cleaning facility registers for a sales tax license. During conversations with the Site Assessment Section of DHEC, it has been discovered that DHEC has difficulty in identifying new facilities; DHEC often relies on internet searches or industry “word of mouth” to locate new facilities. If DOR notifies DHEC of the registration of a new facility, DHEC would be able to notify those facilities about potential environmental concerns for the owner in a timely manner.

In addition to these suggestions, we should continue to review the current procedures for the identification and registration of the dry cleaning facilities. Some suggestions for additional review are:

1. We should make formal requests to the Suppliers of solvent for information concerning the total number of gallons sold of Halogenated solvents and the list of facilities. During informal contacts, solvent suppliers are not enthusiastic about releasing customer lists unless under official audit.
2. We should continue to track monthly payments for the retroactive fees. It is imperative that all locations making monthly payments in order to remit the retroactive fees are tracked in order to insure the correct balance in the Trust Fund.
3. DOR should continue to track the second notices to insure notification of the entire industry. In 1995, DOR failed to verify that all facilities had been notified. By tracking the second notices, we should be able to confirm notification and responses from the vast majority of the facilities.

Due to the fact that the previous version of the law was not only confusing but was applied inconsistently, the industry had no "buy-in" concerning the success of the Trust Fund. Act No. 237 enacted on May 24, 2004 clarified the language but also added an additional 1% Surcharge (sales tax) on dry cleaning at participating facilities. If the amendment is explained clearly and consistently, DHEC and DOR may experience a more cooperative industry and the Trust Fund may be sufficiently funded. The proposed suggestions may also be evaluated further and, if possible, implemented to insure the success of the Trust Fund for many years to come.

Attachment #1 – SC Code of Laws

DRYCLEANING FACILITY RESTORATION TRUST FUND

SECTION 44-56-410. Definitions.

As used in this article:

- (1) "Department" means the Department of Health and Environmental Control.
- (2) "Discharge" means leakage, seepage, or other release.
- (3) "Drycleaning facility" means a professional retail commercial establishment located in this State that operates or has at some time in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics from members of the public utilizing a process which involves the use of drycleaning solvents. "Drycleaning facility" includes laundry facilities that are using or have used drycleaning solvents as part of their cleaning process, but does not include textile mills or uniform rental and linen supply facilities.
- (4) "Drycleaning solvents" means nonaqueous solvents used in the cleaning of clothing and other fabrics and includes halogenated drycleaning fluids and nonhalogenated cleaners, and their breakdown products. "Drycleaning solvents" includes only solvents originating from use at a drycleaning facility or by a wholesale supply facility.
- (5) "Dry drop-off facility" means a commercial retail store that receives from customers clothing and other fabrics for drycleaning at an off-site drycleaning facility and does not clean the clothing or fabrics at the store utilizing drycleaning solvents.
- (6) "Employee" means a natural person employed and paid by the owner of a drycleaning facility for thirty-five or more hours a week for forty-five or more weeks a year and on whose behalf the owner contributes payments to the South Carolina Employment Security Commission or Department of Revenue as required by law. Excluded from the meaning of the term "employee" are owners of drycleaning facilities and family members of owners, regardless of the level of consanguinity, if the family members are not employed and compensated pursuant to the definition of the term "employee" contained in this item. Part-time employees who are employed and paid for fewer than thirty-five hours a week for fewer than forty-five weeks a year must not be deemed to be employees unless their hours and weeks of employment, when combined with the hours and weeks of employment of another or other part-time employee or employees, total thirty-five or more hours a week for forty-five or more weeks a year.
- (7) "Person" means any individual, partnership, corporation, association, or other entity that is vested with ownership, dominion, or legal or rightful title to the real property or which has a ground lease interest in the real property on which a drycleaning or wholesale supply facility is or has ever been located.

(8) "Wholesale supply facility" means a commercial establishment that supplies drycleaning solvents to drycleaning facilities.

(9) "Insolvent" means the approved expenses of the Department of Health and Environmental Control and the Department of Revenue as well as the estimated cleanup costs are projected to exceed the fund balance and projected revenues for a five-year period commencing on January fifteenth of each year.

(10) "Halogenated drycleaning fluid" means any nonaqueous solvent formulated, in whole or in part, with ten percent or more by volume any of the halogenated compounds chlorine, bromine, fluorine, or iodine. Halogenated drycleaning fluids include perchloroethylene (also known as tetrachloroethylen), trichlorethylene, and any breakdown components of them.

(11) "Nonhalogenated cleaner" means any nonaqueous solvent used in a drycleaning facility that contains less than ten percent by volume of any halogenated compound. Nonhalogenated cleaners include petroleum based drycleaning solvents and any breakdown components of them.

(12) "Nonaqueous solvent" means any cleaning formulation designed to minimize swelling of fabric fibers and containing less than fifty-one of water by volume.

SECTION 44-56-420. Drycleaning Facility Restoration Trust Fund established.

(A) There is created in the state treasury a separate and distinct account called the "Drycleaning Facility Restoration Trust Fund", revenue for which must be collected and enforced by the Department of Revenue, and the fund must be administered by the Department of Health and Environmental Control and expended for the purposes of this article. However, the department may contract for the administration of the fund or any part of the administration of the fund. Judgments, recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section, the tax revenues levied, collected, and credited pursuant to Section 44-56-480, and the registration fees collected pursuant to Section 44-56-470 must be credited to the fund. Charges against the fund must be made in accordance with the provisions of this section. The State accepts no financial responsibility as a result of the creation of the fund. The creation of the fund creates no burden upon the State to provide monies for the fund by any mechanisms other than as provided in this section. At no time shall monies from the general fund be obligated to supplement the fund. The State may recover to the fund any funds expended from the fund which were not utilized in accordance with this article.

(B) Whenever incidents of contamination by drycleaning solvents related to the operation of drycleaning facilities or wholesale supply facilities pose a threat to the environment or the public health, safety, or welfare, the department shall obligate monies available in the fund pursuant to this section to provide for:

(1) the prompt investigation and assessment of the contaminated sites; however, the owner or operator of a drycleaning facility or wholesale supply facility or a person must pay for the cost of the investigation and assessment up to the amount of the owner's, operator's, or person's deductible, and the department only shall provide monies that exceed the owner's, operator's, or

person's deductible; however, in order to receive these monies the owner, operator, or person must comply with this article and the regulations promulgated under this article;

(2) the expeditious treatment, restoration, or replacement of potable water supplies;

(3) the rehabilitation of contaminated drycleaning facility sites, which consist of rehabilitation of affected soil, groundwater, and surface waters, using the most cost-effective alternative that is reliable and feasible technologically and that provides adequate protection of the public health, safety, and welfare and minimizes environmental damage in accordance with the site selection and rehabilitation criteria established by the department, except that nothing in this article may be construed to authorize the department to obligate funds for payment of costs which may be associated with, but are not integral to, site rehabilitation;

(4) the maintenance and monitoring of contaminated sites;

(5) the inspection and supervision of activities described in this section;

(6) the expenses of administering the fund by the department including the employment of department staff to carry out the department's duties described in this article; however, the department may exclude five percent of the average annual collections of the fund or the amount required to fund four employees and the administrative costs associated with these employees, whichever is greater;

(7) the payment of reasonable costs of restoring property so as to assure public health and safety, as determined by the department.

(C) The fund may not be used to:

(1) restore sites which are contaminated by solvents normally used in drycleaning operations if the activities at a site are not related to the operation of a drycleaning facility or wholesale supply facility;

(2) restore sites that are contaminated by drycleaning solvents being transported to or from a drycleaning facility or wholesale supply facility or that are contaminated as a result of the delivery of drycleaning solvents to a drycleaning facility or wholesale supply facility on or after July 1, 1995, if the contamination resulted from gross negligence;

(3) fund any costs related to the restoration of a site that is proposed for listing or is listed on the State Priority List or on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, or any site that is required to obtain a permit pursuant to the Resource Conservation and Recovery Act, as amended;

(4) pay any costs associated with a fine, penalty, or action brought against the owner or operator of a drycleaning facility or wholesale supply facility or a person under local, state, or federal law;

(5) pay any costs incurred before July 1, 1995, for the remediation of a contaminated site;

- (6) pay any costs to landscape or otherwise artificially improve a contaminated site;
- (7) pay any contamination assessment or costs restoration before the actual date of the first payment of registration fees for the site pursuant to Section 44-56-470(B);
- (8) pay any costs related to contamination assessment where no contamination from drycleaning solvents is discovered;
- (9) pay any costs for work not approved by the department in accordance with this article or regulations promulgated pursuant to this article;
- (10) restore sites that are uniform rental and linen supply facilities unless the site was operated on or after July 1, 1995, as a professional retail drycleaning facility for garments or fabrics belonging to the public and has participated in the fund;
- (11) restore sites that are no longer operated as drycleaning facilities or coin-operated drycleaning facilities where the owner or person has not paid a registration fee for the site pursuant to Section 44-56-470(B) and has not been involved in the drycleaning industry after October 1, 1995.

(D) The department shall promulgate regulations that provide for an initial contamination assessment to determine whether a drycleaning facility or wholesale supply facility is contaminated by drycleaning solvents. Payment for the initial assessment is as provided for in subsection (B), and site rehabilitation portions of the program must be administered through direct payments to contractors actually accomplishing the site rehabilitation and not through reimbursement to drycleaning or wholesale supply facility owners, operators, or persons. All services related to site rehabilitation must be preapproved by the department before performance in order to receive payment for services rendered.

(E) If the committed money in the fund exceeds the current fund balance and the department declares a site is an emergency, the owner or operator of the drycleaning facility, wholesale facility, or person is liable for the cost of that cleanup. However, once the fund has funds available, the owner, operator, or person who paid for the approved cleanup must be reimbursed for the costs incurred to clean up the site through annual payments which may not exceed five percent of the total fund's average annual balance if the cleanup complies with the provisions of this article or regulations promulgated under this article. The fund may not obligate itself for more than it is estimated to generate through surcharges, annual fees, and registration fees.

SECTION 44-56-430. Environmental surcharge.

(A)(1) One percent of the gross proceeds of sales of a drycleaning facility must be levied as an environmental surcharge on every owner or operator of a drycleaning facility participating in the drycleaning facility restoration trust fund except for the facilities possessing a valid statement of nonparticipation pursuant to Section 44-56-480(A).

(2) At any time the uncommitted balance of the Drycleaning Facility Restoration Trust Fund Account exceeds five million dollars, the one percent of the gross proceeds of sales of

drycleaning surcharge is suspended until that time the uncommitted balance of the trust fund account becomes less than one million dollars. The Department of Health and Environmental Control is responsible for notifying the Department of Revenue when these amounts have been reached. The suspension of the environmental surcharge occurs at the end of the month in which the Department of Revenue is so notified by the Department of Health and Environmental Control. The lifting of the suspension occurs on the first day of the month following the month in which the Department of Revenue is so notified by the Department of Health and Environmental Control.

(B)(1) The initial surcharge imposed by this section is due and payable on the twentieth day of the third month succeeding the month in which the charge is imposed. Subsequent charges are due and payable on or before the twentieth day of each month for the preceding month. The Department of Revenue may authorize the quarterly, semiannual, or annual payment of this surcharge. The surcharge must be reported on forms and in the manner determined by the Department of Revenue.

(2) The Department of Revenue must administer, collect, and enforce the surcharge in the manner that the sales and use taxes are administered, collected, and enforced under Chapter 36 of Title 12, except that no timely payment discount or exemptions or exclusions are allowed. The provisions of Title 12 apply to the collection and enforcement of the surcharge by the Department of Revenue.

(3) The Department of Revenue shall retain funds for the costs incurred to administer, collect, and enforce the fund which may include a part-time employee with the related expenses for audit purposes. The funds withheld shall not exceed the actual costs to administer, collect, and enforce the fund. The proceeds of the surcharge, after deducting the costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the surcharge, must be remitted to the State Treasurer and credited to the fund and must be used as provided in Section 44-56-420. For the purposes of this section, the proceeds of the surcharge include all funds collected and received by the Department of Revenue including interest and penalties on delinquent surcharges.

(C) The Department of Health and Environmental Control is required to report each January fifteenth the current financial position of the Drycleaning Facility Restoration Trust Fund to the General Assembly. In addition, Department of Health and Environmental Control must include projected information that would enable the General Assembly to determine the solvency of the fund. At a minimum this must include a five-year budget projection. This report must also review and comment on the adequacy of the current program in resolving contamination problems at both operating and closed drycleaning facilities in this State.

SECTION 44-56-440. Moratorium established on administrative and judicial actions by department.

(A) The Board of the Department of Health and Environmental Control shall establish a moratorium on administrative and judicial actions by the department concerning drycleaning facilities and wholesale supply facilities resulting from the discharge of drycleaning solvents to soil or waters of the State. This moratorium applies only to those facilities deemed eligible as

defined in this section. The board may review and determine the appropriateness of the moratorium at least annually. This review shall include, but is not limited to, consideration of these factors:

- (1) the solvency of the fund as described in Section 44-56-420;
- (2) prioritization of the sites;
- (3) public health concerns related to the sites;
- (4) eligibility of the sites;
- (5) corrective action plans submitted to the department.

After review, the board may suspend all or a portion of the moratorium if necessary.

(B) A drycleaning facility or wholesale supply facility that is being operated as a drycleaning facility or wholesale supply facility at the time a request for determination of eligibility is filed and at which there is contamination from drycleaning solvents is eligible under this section regardless of when the contamination was discovered if the drycleaning facility or wholesale supply facility:

- (1) has been registered with and has paid all annual fees, surcharges, and solvent fees as required by the Department of Revenue;
- (2) is determined by the department to be in compliance with department regulations regulating drycleaning facilities or wholesale supply facilities;
- (3) has third-party liability insurance when and if the insurance becomes available at a reasonable cost, as determined by the Department of Insurance and if the insurance covers liability for contamination that occurred both before and after the effective date of the policy;
- (4) has provided documented evidence of contamination by drycleaning solvents;
- (5) has not been operated in a grossly negligent manner at any time after November 18, 1980.

(C) A drycleaning facility or wholesale supply facility that ceases to be operated as a drycleaning facility or wholesale supply facility before July 1, 1995, and before the time a request for determination of eligibility is filed at which there is contamination from drycleaning solvents is eligible under this section regardless of when the contamination was discovered provided the owner or operator of the drycleaning facility or wholesale supply facility or person provides documented evidence of the contamination by drycleaning solvents and the owner, operator, or person has paid all annual fees, surcharges, and solvent fees on every drycleaning facility in existence under their control since July 1, 1995, as required by the Department of Revenue.

(D) A drycleaning facility that has been contaminated as a result of the discharge of drycleaning solvents by a supplier of solvents during the delivery of drycleaning solvents to a drycleaning

facility first must utilize the insurance of the supplier to the full extent of the coverage for site rehabilitation before any funds may be expended from the fund for the rehabilitation of that portion of the site which was contaminated by the discharge during delivery.

(E) If the facility started operation before six months after the effective date of this act and an eligible drycleaning or wholesale owner or operator or person applies for monies from the fund on or before:

(1) eighteen months after the effective date of this act, the deductible is one thousand dollars;

(2) thirty months after the effective date of this act, the deductible is twenty-five thousand dollars.

An eligible drycleaning facility that has applied for monies from the fund prior to the effective date of this paragraph shall have a deductible of one thousand dollars regardless of any deductible previously assigned to the facility based on its application date or type of site. Any approved assessment or remedial costs in excess of one thousand dollars previously incurred by the owner, operator, or person shall be refunded, without interest, to such party by the department.

A facility first starting its operations on or after six months after the effective date of this act shall have a deductible of twenty-five thousand dollars if it is determined to be eligible if the operator or person applies for money from the fund within six months of obtaining evidence of contamination.

(F) An owner of a drycleaning facility or wholesale supply facility or person seeking eligibility under this subsection shall submit an application for determination of eligibility to the department on forms provided by the department. The department shall review the application and request any additional information within ninety days. The department shall notify the applicant within one hundred eighty days as to whether the facility is eligible.

(G) Eligibility under this subsection applies to the site of the drycleaning facilities or wholesale supply facilities. A determination of eligibility or ineligibility is not affected by the subsequent conveyance of the ownership of the drycleaning facilities or wholesale supply facilities.

(H) This section does not apply to a site where the department has been denied site access to implement this section or to drycleaning facilities owned or operated by a local government or by the state or federal government.

(I) A site owned by an owner of a drycleaning facility or a person at any time subsequent to October 1, 1995, who misrepresents the number of employees upon which the registration fee provided for in Section 44-56-460 is based is not eligible for funds under this section.

SECTION 44-56-450. Reporting of discharged drycleaning solvent causing contamination.

(A) In order to identify drycleaning facilities and wholesale suppliers which have experienced contamination resulting from the discharge of drycleaning solvents and to assure the most

expedient rehabilitation of these sites, the owners and operators of drycleaning facilities and wholesale suppliers and persons are encouraged to detect and report contamination from drycleaning solvents related to the operation of drycleaning facilities or wholesale supply facilities. Forms must be distributed to owners and operators of drycleaning and wholesale supply facilities and to persons. The Department of Revenue shall use reasonable efforts to identify and notify owners, operators, and persons of drycleaning and wholesale supply facilities within six months after the effective date of this act of the registration requirements by certified mail, return receipt requested. The Department of Revenue shall provide to the Department of Health and Environmental Control a copy of each applicant's registration materials within thirty working days of the receipt of the materials.

(B) A report of drycleaning solvent contamination at a drycleaning facility made to the department by a person in accordance with this article or regulations promulgated under this article may not be used directly as evidence of liability for the discharge in a civil or criminal trial arising out of the discharge.

SECTION 44-56-460. Establishment of priorities for rehabilitation at contaminated facilities.

(A) The fund must be used to rehabilitate sites that pose a significant threat to the public health, safety, or welfare. The department shall promulgate regulations to establish priorities for state-conducted rehabilitation at contaminated drycleaning facilities or wholesale supply facilities sites based upon factors that include, but are not limited to:

- (1) the degree to which human health, safety, or welfare may be affected by exposure to the contamination;
- (2) the size of the population or area affected by the contamination;
- (3) the present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting or will migrate to and substantially affect a known public or private source of potable water; and
- (4) the effect of the contamination on the environment.

(B) Nothing in this subsection may be construed to restrict the department from modifying the priority status of a drycleaning facility or wholesale supply facility rehabilitation site where conditions warrant. Criteria for determining completion of site rehabilitation program tasks and site rehabilitation programs must be based upon the factors set forth in subsection (A)(1) and these factors:

- (1) individual site characteristics, including natural rehabilitation processes;
- (2) applicable state water quality standards;
- (3) whether deviation from state water quality standards or from established criteria is appropriate, based upon the degree to which the desired rehabilitation level is achievable and can be reasonably and cost-effectively implemented within available technologies or control

strategies, except that, where a state water quality standard is applicable, the deviation may not result in the application of standards more stringent than the standard;

(4) it is recognized that restoration of groundwater resources contaminated with certain drycleaning solvents, such as perchloroethylene, may not be achievable using currently available technology. In situations where available technology is not anticipated to meet water quality standards, the department, at its discretion, is encouraged to use innovative technology including, but not limited to, technology which has been field tested through the federal innovative technology program and which has engineering and cost data available;

(5) nothing in this section may be construed to restrict the department from temporarily postponing completion of a site rehabilitation program for which drycleaning restoration funds are being expended whenever the postponement is considered necessary in order to make funds available for rehabilitation of a drycleaning facility or wholesale supply facility site with a higher priority status;

(6) the department shall provide the rehabilitation of eligible drycleaning facilities and wholesale supply facilities consistent with this subsection. Nothing in this article subjects the department to liability for any action that may be required of the owner, operator, or person by a private party or a local, state, or federal governmental entity.

(C) The department may not expend more than two hundred fifty thousand dollars from the fund annually to pay for the costs at any one eligible site for the activities described in Section 44-56-420(B).

(D) The department shall promulgate regulations necessary for the implementation of this section.

(E) The department shall create a mechanism in which consultants' credentials, work objectives and plans, proposed costs ranging from assessment, cleanup, and monitoring are outlined and submitted in writing for the department's approval. The department shall establish a list of those vendors who are qualified to perform work to be financed by the fund. Vendors must be recertified every two years.

SECTION 44-56-470. Annual registration and fees for drycleaning facilities.

(A) For each drycleaning facility owned and in operation, the owner or operator of the facility or person shall register with and pay initial registration fees to the Department of Revenue by October 1, 1995, and pay annual or quarterly renewal registration fees as established by the Department of Revenue. The fee must be accompanied by a notarized certification from the owner, on a form provided by the Department of Revenue, certifying the number of employees employed by the owner, or operator, for the twelve-month period preceding payment of the fee.

(B) An initial and annual registration fee for each drycleaning facility with:

(1) up to four employees is seven hundred fifty dollars;

(2) five to ten employees is one thousand five hundred dollars;

(3) eleven or more employees is two thousand two hundred fifty dollars.

(C) The provisions of Title 12 apply to the collection and enforcement of the fees by the Department of Revenue.

(D) The Department of Revenue must retain funds for the costs incurred to collect and enforce the fund which may include a part-time employee with the related expenses for audit purposes. The funds withheld shall not exceed the actual costs to administer, collect, and enforce the fund. The proceeds of the registration fee, after deducting the costs incurred by the Department of Revenue in auditing, collecting, distributing, and enforcing the registration fee, must be remitted to the State Treasurer and credited to the fund and must be used as provided in Section 44-56-420. For the purposes of this section, the proceeds of the registration fee include all funds collected and received by the Department of Revenue including interest and penalties on delinquent fees.

(E) Revenue derived from the registration fees must be submitted to the State Treasurer and credited to the Drycleaning Facility Restoration Trust Fund.

(F) Before a year after the effective date of this act, an owner or operator of a drycleaning facility in operation before six months after the effective date of this act, shall install dikes or other containment structures around each machine or item of equipment in which drycleaning solvents are used and around an area in which solvents or waste containing solvents are stored. The containment must meet the following criteria:

(1) the dikes or containment structures must be capable of containing one- third of the capacity of the total tank capacity of each machine;

(2) dikes or containment structures around areas used for storage of solvents or waste containing solvents must be capable of containing one hundred percent of the volume of the largest container stored or retained in the containment structure;

(3) all diked containment areas must be sealed or otherwise made impervious to the drycleaning solvents in use at the facility, including floor surfaces, floor drains, floor joints, and inner dike walls;

(4) to the extent practicable, an owner of a drycleaning facility or person shall seal or otherwise render impervious those portions of all floor surfaces upon which any drycleaning solvents may leak, spill, or otherwise be released;

(5) containment devices must provide for the temporary containment of accidental spills or leaks until appropriate response actions are taken by the owner/operator to abate the source of the spill and remove the product from all areas on which the product has accumulated; and

(6) materials used in constructing the containment structure or sealing the floors must be capable of withstanding permeation by drycleaning solvents in use at the facility for not less than seventy-two hours.

(G) For drycleaning facilities that commence operating on or after six months after the effective date of this act, the owners or operators of these facilities or persons, before the commencement of operations, shall install beneath each machine or item of equipment in which drycleaning solvents are used a rigid and impermeable containment vessel capable of containing one hundred percent of the volume of the largest single tank in the machine or piece of equipment or one-third of the total tank capacity of each machine, whichever is greater. Dikes or containment structures must be installed before delivery of any drycleaning solvents to the facility. All dikes or containment structures shall meet all criteria of Section 44-56-470(F).

(H) A person or the owner or operator of a drycleaning facility or wholesale supply facility at which there is a spill of more than the federally mandated reportable quantity of drycleaning solvent outside of a containment structure, after July 1, 1995, shall report the spill to the department immediately upon the discovery of the spill and comply with existing emergency response regulations.

(I) Failure to comply with the requirements of this section constitutes gross negligence with regard to determining site eligibility.

SECTION 44-56-480. Surcharge on drycleaning solvent and halogenated drycleaning fluid.

(A) Beginning July 1, 1995, an environmental surcharge is assessed on the privilege of producing in, importing into, or causing to be imported into the State drycleaning solvent. A surcharge of ten dollars per gallon on halogenated drycleaning fluid and two dollars per gallon on nonhalogenated cleaner is levied on each gallon to be used for drycleaning purposes when first imported into or produced in the State. Nonhalogenated cleaners purchased, produced, or transported in a nonliquid physical state must be assessed a surcharge of twenty cents per pound. A drycleaning facility that has made an election not to be under the provisions of this article pursuant to Section 44-56-485(A) or (B) may request a statement of nonparticipation from the Department of Revenue so as to demonstrate its status under this article and its exemption from the surcharge provided for in this subsection.

(B) A person producing in, importing into, or causing to be imported into this State drycleaning solvent for sale, use, or otherwise must register with the Department of Revenue and become licensed for the purposes of remitting the surcharge pursuant to this section. The person must register as a producer or importer of drycleaning solvent. Persons operating at more than one location only are required to have a single registration. The fee for registration is thirty dollars. Failure to register before importing or producing drycleaning solvent into this State is a misdemeanor and, upon conviction, the person must be fined up to twenty-five thousand dollars or imprisoned up to thirty days.

(C) The surcharge imposed by this section is due and payable on or before the twentieth day of the month succeeding the month of production, importation, or removal from a storage facility.

The surcharge must be reported on forms and in the manner determined by the Department of Revenue.

(D) All drycleaning solvent to be used for drycleaning purposes which are imported, produced, or sold in this State are presumed to be subject to the surcharge imposed by this section. An owner, operator, or person, who has purchased drycleaning solvent for sale, use, consumption, or distribution in this State must document that the surcharge imposed by this section has been paid or must pay the surcharge directly to the Department of Revenue in accordance with subsection (C). The solvent dealer may pass the costs of the surcharge to owners, operators, or persons of drycleaning facilities except the surcharge imposed by this section must not be charged to a facility possessing a statement of nonparticipation pursuant to Section 44-56-480(A).

(E) The surcharge imposed by this section must be remitted to the Department of Revenue. The payment must be accompanied by the forms as the Department of Revenue prescribes. The proceeds of the surcharge, after deducting the administrative costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the surcharge, must be remitted by the Department of Revenue to the State Treasurer to be credited to the Drycleaning Facility Restoration Trust Fund and must be used as provided in Section 44-56-420. For the purposes of this section, the proceeds of the surcharge include all funds collected and received by the Department of Revenue, including interest and penalties on delinquent surcharges.

(F) The Department of Revenue shall administer, collect, and enforce the surcharge authorized under this section in the manner that sales and use taxes are administered, collected, and enforced under Chapter 36 of Title 12, except no timely payment discount or exemptions or exclusions are allowed. Provisions of Title 12 regarding the Department of Revenue's authority to audit and make assessments, the keeping of books and records, and interest and penalties on delinquent taxes apply.

(G) The Department of Revenue must retain funds for the costs incurred to administer, collect, and enforce the program. The proceeds of the surcharge, after deducting the costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the surcharge, must be remitted to the State Treasurer and credited to the fund and must be used as provided in Section 44-56-420. For the purposes of this section, the proceeds of the surcharge include interest and penalties collected by the Department of Revenue.

(H) The Department of Revenue may establish audit procedures and assess delinquent surcharges.

(I) Drycleaning solvent used for drycleaning exported from the first storage facility at which it is held in this State by the producer or importer is exempt from the surcharge pursuant to this section. Anyone exporting drycleaning solvent on which the surcharge has been paid may apply for a refund or credit. A person who sells drycleaning solvent that is exempt from the collection of the surcharge pursuant to subsection (D) may apply for a credit or refund. The Department of Revenue may require information as it considers necessary in order to approve the refund or credit.

(J) The Department of Revenue may authorize:

(1) a quarterly return and payment when the surcharge remitted by the licensee for the preceding quarter did not exceed one hundred dollars;

(2) a semiannual return and payment when the surcharge remitted by the licensee for the preceding six months did not exceed two hundred dollars;

(3) an annual return and payment when the surcharge remitted by the licensee for the preceding twelve months did not exceed four hundred dollars.

SECTION 44-56-485. Applicability of Article 4; election to place facility under provisions of article; election to remove facility from requirements of article.

(A) Notwithstanding any other provision of this article, this article does not apply to a drycleaning facility that was in existence on July 1, 1995, that drycleans with nonhalogenated cleaners only, nor to dry drop-off facilities whose clothing and other fabrics are cleaned only by such a drycleaning facility. However, an owner or operator of a facility or person may elect to place the facility under the provisions of this article by paying the required annual fee for the facility before October 1, 1995. If an owner or operator of a facility or person does not elect to place a facility under this article before October 1, 1995, the current or a future owner or operator of the site or person is prohibited from receiving any funds or assistance under this article. Failure to pay the required annual fee by October 1, 1995, constitutes electing not to place a facility under this article. Additionally, an owner, operator, or person who does not elect to place a facility under this article is prohibited from receiving any funds or assistance under this article for any site the owner, operator, or person currently or previously operated or abandoned.

(B) A drycleaning facility in existence on July 1, 1995, that uses halogenated fluids and nonhalogenated cleaners may elect to remove the facility from the requirements of this article if the election is made before October 1, 1995. Failure to pay the required annual fee by October 1, 1995, constitutes electing to remove a facility from the requirements of this article. An owner, operator, or person of a facility using halogenated and nonhalogenated cleaners may not elect to remove a facility from the requirements of this article for one solvent and not the other.

(C) Notwithstanding subsections (A) and (B) of this section, if a person or an owner or operator of a drycleaning facility in existence on July 1, 1995, has made an election not to place a facility under the provisions of this article as allowed in subsection (A) or (B) above, then the person, owner, or operator may affirmatively and irrevocably elect to place the drycleaning facility under the provisions of this article. This election must be made by registering with the Department of Revenue on or before July 1, 2005, and paying the fees and taxes provided under this article. An electing drycleaning facility is liable for payment of all taxes and fees from the later of July 1, 1995, or the date the drycleaning facility began operating, but is not liable for any penalties or interest. An electing drycleaning facility may pay the back taxes and fees that the facility is required to pay under this subsection by making monthly installments toward full payment of all back taxes and fees. The monthly installments must commence no later than July 1, 2004, and all back taxes and fees must be fully paid on or before July 1, 2006.

(D) Notwithstanding any other provision of this article, any person or owner or operator of a drycleaning facility that has not registered with the Department of Revenue and complied with the provisions of this article may voluntarily register with the Department of Revenue on or before July 1, 2005, without incurring any penalties or interest. Payment of all taxes and fees due pursuant to this article is required to be made from the later of July 1, 1995, or the date the drycleaning facility began operating. Any person or owner or operator of a drycleaning facility that does not voluntarily register under this provision is subject to interest, penalties, and payment of all taxes and fees from the later of July 1, 1995, or the date the drycleaning facility began operating. No fees will be prorated or refunded for a business in operation for less than twelve months.

(E) Notwithstanding any other provisions in this article, the department may direct the Department of Revenue to allow a person or owner or operator of a drycleaning facility, who elected not to place the facility under this article pursuant to subsection (A) or (B) of this section to register, provided the department finds that the person or owner or operator of the drycleaning facility requesting to register did not have notice of this article for more than ninety days prior to requesting registration. The person or owner or operator of a drycleaning facility registering pursuant to this subsection is liable for payment of all taxes or fees, including interest, from the later of July 1, 1995, or the date the drycleaning facility began operating; however, the registering person, owner, or operator is not liable for penalties. No fees will be prorated or refunded for a business in operation for less than twelve months.

Attachment #2 – Letter written to Dry Cleaners

State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

NOTICE TO DRY CLEANING FACILITIES

TO: Dry Cleaning Facilities
FROM: South Carolina Department of Revenue
SUBJECT: Drycleaning Facility Restoration Trust Fund
DATE: November 23, 2004

Effective July 1, 1995, legislation created the South Carolina Drycleaning Facility Restoration Trust Fund which provides for the cleanup at drycleaning facilities of discharges of solvents which pose a threat to the environment. On May 24, 2004, the South Carolina General Assembly enacted Act No. 237 which allows certain drycleaning facilities that do not currently participate in the Trust Fund another opportunity to register for the Trust Fund. You may review this Act on our website, www.sctax.org. The information is included in the "What's New" section of the homepage.

The following information explains which facilities must register for the Trust Fund, the facilities that have the option to participate, the dates by which your registration or election must be completed and the options available for payment.

For those facilities or locations in operation on or before July 1, 1995:

- (1) If you clean with Halogenated drycleaning fluids, you must register the facility for the Trust Fund and pay the appropriate fees. Fees are due retroactive to July 1, 1995. You should complete the attached Form L-2093 for each year of operation and return it with the required fee(s) to the address shown. You do not have the option of non-participation in the Trust Fund. If you do not register for the Trust Fund, you will be assessed the appropriate fees including penalties and interest.
- (2) If you clean with Nonhalogenated cleaners only and you were in operation on July 1, 1995, you once again have the option of participating in the Trust Fund. You must notify this office of your irrevocable election no later than July 1, 2005. If you elect to participate, complete the Form L-2093 for each year of operation and return it with the required fee(s) to the address shown. You will not be liable for penalties or interest if you make a timely election and you may make monthly installments through July 2006 in order to pay the back fees. If you elect not to participate, you should complete the Statement of Nonparticipation. If you elect not to participate, you or any future owner/operator will not be eligible for any disbursement from the Trust Fund and you may be held personally liable for any clean-up costs.

- (3) If you clean with both Halogenated fluids and Nonhalogenated cleaners and you were in operation on July 1, 1995, you have the option of participating in the Fund. You must notify this office of your election no later than July 1, 2005. If you elect to participate, complete the Form L-2093 for each year of operation and return it with the required fee(s) to the address shown. You will not be liable for penalties or interest if you make a timely election and you may make monthly installments through July 2006 in order to pay the back fees. If you elect not to participate, you should complete the Statement of Non-participation. If you elect not to participate, you or any future owner/operator will not be eligible for any disbursement from the Trust Fund and you may be held personally liable for any clean-up costs.

For those facilities or locations which began operations after July 1, 1995:

- (1) If the Drycleaning facility or location opened after July 1, 1995 and the facility/location uses solvent, you must register the facility for the Trust Fund and pay the appropriate fees, regardless of the solvent used at your location. You do not have the option of non-participation in the Trust Fund. If you do not register for the Trust Fund, you will be assessed the appropriate fees including penalties and interest. Fees are due retroactive to the date the location opened and there is no proration of fees for any partial year. You should complete the Form L-2093 each year of operation and return it with the required fee(s) to the address shown.

It is imperative to remember the following:

- (1) Registration or the appropriate election of non-participation is required from each "wetsite" location (facility/location that uses solvent) no later than July 1, 2005. "Dry drop-off" facilities are not required to register but should complete the Statement of Nonparticipation and return it to this office by July 1, 2005.
- (2) Your facility may be eligible to obtain cleanup funds from the Trust Fund only if you register the facility or location for the Trust Fund by July 1, 2005 and pay the appropriate fees. If you elect not to participate, you or any future owner/operator will not be eligible for any disbursement from the Trust Fund and you may be held personally liable for any clean-up costs.
- (3) In addition to the annual registration fee, participants in the Trust Fund are required to pay a solvent surcharge and an additional 1% surcharge on the gross proceeds of sales. The 1% surcharge on the gross proceeds of sales of a drycleaning facility was also enacted by Act No. 237 and was detailed in our letter of June 16, 2004. The solvent surcharge is based on the type of drycleaning solvent used by the facility. We have included definitions of the two types of solvents defined in the legislation.

We have enclosed two forms for your convenience:

- (1) Statement of Nonparticipation - Permanent election form for those facilities that have the option of participation/non-participation; and
- (2) Form L-2093 - Drycleaning Facility Registration Form for those facilities that are required to participate in the Fund or those facilities that wish to voluntarily participate. The annual registration fees are based on the number of employees of the participating drycleaning facilities. The fee schedule is as follows:

\$750.00	- Up to four (4) employees
\$1500.00	- Five (10) to ten (10) employees
\$2250.00	- Eleven (11) or more employees

Participation in the Fund:

If you have elected to not participate in the Fund in the past, this new legislation may afford you an opportunity to voluntarily participate in the Fund by paying all back fees by July 1, 2006. To determine if you are currently eligible to join the Fund, you may contact the DHEC within the next sixty days at 1-866-343-2379 (toll-free).

Each facility and/or location must notify the South Carolina Department of Revenue of their election. If you are required to participate in the Trust Fund or, if qualified, you voluntarily elect to participate in the Fund, you should complete the Form L-2093 in its entirety and return it to the address below no later than July 1, 2005. The appropriate fee will be due for each year the location has been in existence as a drycleaning facility. If you elect to not participate in the Fund and you are eligible to do so, you should complete the Statement of Non-participation and return it to the address listed within 90 days of this letter.

Please mail the completed Statement of Nonparticipation or the Registration Form with appropriate fee(s) to:

SOUTH CAROLINA DEPARTMENT OF REVENUE
REGISTRATION SECTION
COLUMBIA SC 29214-0140

If you have questions regarding this notice, please call (803) 898-5872 or your nearest South Carolina Department of Revenue Taxpayer Service Center.

Definitions

Code Section 44-56-410 defines the following:

"Drycleaning facility" means a professional retail commercial establishment located in this State that operates or has at some time in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics from members of the public utilizing a process which involves the use of drycleaning solvents. "Drycleaning facility" includes laundry facilities that are using or have used drycleaning solvents as part of their cleaning process, but does not include textile mills or uniform rental and linen supply facilities.

"Drycleaning solvents" means nonaqueous solvents used in the cleaning of clothing and other fabrics and includes halogenated drycleaning fluids and nonhalogenated cleaners, and their breakdown products. "Drycleaning solvents" includes only solvents originating from use at a drycleaning facility or by a wholesale supply facility.

"Dry drop-off facility" means a commercial retail store that receives from customers clothing and other fabrics for drycleaning at an off-site drycleaning facility and does not clean the clothing or fabrics at the store utilizing drycleaning solvents.

"Employee" means a natural person employed and paid by the owner of a drycleaning facility for thirty-five or more hours a week for forty-five or more weeks a year and on whose behalf the owner contributes payments to the South Carolina Employment Security Commission or Department of Revenue as required by law. Excluded from the meaning of the term "employee" are owners of drycleaning facilities and family members of owners, regardless of the level of consanguinity, if the family members are not employed and compensated pursuant to the definition of the term "employee" contained in this item. Part-time employees who are employed and paid for fewer than thirty-five hours a week for fewer than forty-five weeks a year must not be deemed to be employees unless their hours and weeks of employment, when combined with the hours and weeks of employment of another or other part-time employee or employees, total thirty-five or more hours a week for forty-five or more weeks a year.

"Person" means any individual, partnership, corporation, association, or other entity that is vested with ownership, dominion, or legal or rightful title to the real property or which has a ground lease interest in the real property on which a drycleaning or wholesale supply facility is or has ever been located.

"Wholesale supply facility" means a commercial establishment that supplies drycleaning solvents to drycleaning facilities.

"Halogenated Drycleaning Fluid" is subject to a \$10.00 per gallon surcharge payable to the supplier and includes all solvents that contain 10% or more of any of the compounds known as "Halogens", which is the a chemical name for substances containing chlorine, bromine, fluorine or iodine. Perchloroethylene is considered to be a halogenated fluid.

"Nonhalogenated Cleaners" are subject to a \$2.00 per gallon surcharge payable to the supplier. "Nonhalogenated Cleaners" contain less than 10% of halogen compounds. All current formulations of commercial petroleum-based solvents are considered as nonhalogenated cleaners, as are the newer, synthetic cleaning agents based on silicone (i.e. "Greeneearth") or propylene-glycol ("Impress"). Because of the possibility that nonhalogenated cleaners may eventually be procured in a non-liquid form (e.g. "Carbon Dioxide"), the legislation also includes a surcharge of \$0.20 per pound to cover that eventuality.

**DRYCLEANING FACILITY RESTORATION TRUST FUND
STATEMENT OF NON-PARTICIPATION**

I. PURPOSE

The purpose of this form is to allow qualifying drycleaning facilities to elect not to be included in the Drycleaning Facility Restoration Trust Fund. Those facilities that may elect not to participate include the following:

1. Facilities in existence on or before July 1, 1995 that clean only with Nonhalogenated cleaners;
2. Facilities in existence on or before July 1, 1995 that use both Nonhalogenated and Halogenated drycleaning fluids; or
3. Facilities that are "Dry Drop-off" or "Pick-up" sites only. These facilities certify that they do not use any type of solvent at the location.

If you do not meet any one of the conditions above, you are required to participate in the Trust Fund and you must submit the Form L-2093 by July 1, 2005.

Any owner/operator that does not participate in the Drycleaning Facility Restoration Trust Fund will not be eligible for any disbursement from the Fund and the owner/operator may be held personally liable for any restoration costs at the location. To determine if you are currently eligible to join the Fund, you may contact the DHEC at 1-866-343-2379 (toll-free).

II. ELECTION

SELECT ONLY ONE: Required for each facility/location (If an option is not selected, your election will be invalid and you may be liable for any back fees plus applicable penalties and interest)

_____ I certify that this facility was in existence on or before July 1, 1995 and the facility cleans with Nonhalogenated cleaners only. I elect not to participate in the Fund and I acknowledge that I will not be eligible for any disbursement from the Fund. In addition, I acknowledge that I may be held liable for any clean-up costs.

_____ I certify that this facility was in existence on or before July 1, 1995 and the facility cleans with both Nonhalogenated cleaners and Halogenated drycleaning fluids. I elect not to participate in the Fund and I acknowledge that I will not be eligible for any disbursement from the Fund. In addition, I acknowledge that I may be held liable for any clean-up costs.

_____ I certify that this facility is a "Dry Drop-off facility" only and does not utilize drycleaning solvents.

STATEMENT – Required for each facility/location

I understand that this is a permanent election and there is no provision for reinstatement in the Trust Fund once an election is made for Nonparticipation.

Facility Name _____

Owner Name _____

Street Address _____

Signature of Owner/
Officer/Partner _____

Date _____

If you lease or rent the property where facility is located:

Name of Property Owner: _____

Address of Property Owner: _____

III. APPLICABLE LAW

You may review the entire text of Act No. 237 on our website, www.sctax.org. The information is included in the "What's New" section of the homepage.

Section 44-56-485:

(A) Notwithstanding any other provision of this article, this article does not apply to a drycleaning facility that was in existence on July 1, 1995, that drycleans with nonhalogenated cleaners only, nor to dry drop-off facilities whose clothing and other fabrics are cleaned only by such a dry cleaning facility. However,

Page 2: Statement of Non-Participation

an owner or operator of a facility or person may elect to place the facility under the provisions of this article by paying the required annual fee for the facility before October 1, 1995. If an owner or operator of a facility or person does not elect to place a facility under this article before October 1, 1995, the current or a future owner or operator of the site or person is prohibited from receiving any funds or assistance under this article. Failure to pay the required annual fee by October 1, 1995, constitutes electing not to place a facility under this article. Additionally, an owner, operator, or person who does not elect to place a facility under this article is prohibited from receiving any funds or assistance under this article for any site the owner, operator, or person currently or previously operated or abandoned.

(B) A drycleaning facility in existence on July 1, 1995, that uses halogenated fluids and nonhalogenated cleaners may elect to remove the facility from the requirements of this article if the election is made before October 1, 1995. Failure to pay the required annual fee by October 1, 1995, constitutes electing to remove a facility from the requirements of this article. An owner, operator, or person of a facility using halogenated and nonhalogenated cleaners may not elect to remove a facility from the requirements of this article for one solvent and not the other.

(C) Notwithstanding subsections (A) and (B) of this section, if a person or an owner or operator of a drycleaning facility in existence on July 1, 1995, has made an election not to place a facility under the provisions of this article as allowed in subsection (A) or (B) above, then the person, owner, or operator may affirmatively and irrevocably elect to place the drycleaning facility under the provisions of this article. This election must be made by registering with the Department of Revenue on or before July 1, 2005, and paying the fees and taxes provided under this article. An electing drycleaning facility is liable for payment of all taxes and fees from the later of July 1, 1995, or the date the drycleaning facility began operating, but is not liable for any penalties or interest. An electing drycleaning facility may pay the back taxes and fees that the facility is required to pay under this subsection by making monthly installments toward full payment of all back taxes and fees. The monthly installments must commence no later than July 1, 2004, and all back taxes and fees must be fully paid on or before July 1, 2006.

(D) Notwithstanding any other provision of this article, any person or owner or operator of a drycleaning facility that has not registered with the Department of Revenue and complied with the provisions of this article may voluntarily register with the Department of Revenue on or before July 1, 2005, without incurring any penalties or interest. Payment of all taxes and fees due pursuant to this article is required to be made from the later of July 1, 1995, or the date the drycleaning facility began operating. Any person or owner or operator of a drycleaning facility that does not voluntarily register under this provision is subject to interest, penalties, and payment of all taxes and fees from the later of July 1, 1995, or the date the drycleaning facility began operating. No fees will be prorated or refunded for a business in operation for less than twelve months.

(E) Notwithstanding any other provisions in this article, the department may direct the Department of Revenue to allow a person or owner or operator of a drycleaning facility, who elected not to place the facility under this article pursuant to subsection (A) or (B) of this section to register, provided the department finds that the person or owner or operator of the drycleaning facility requesting to register did not have notice of this article for more than ninety days prior to requesting registration. The person or owner or operator of a drycleaning facility registering pursuant to this subsection is liable for payment of all taxes or fees, including interest, from the later of July 1, 1995, or the date the drycleaning facility began operating; however, the registering person, owner, or operator is not liable for penalties. No fees will be prorated or refunded for a business in operation for less than twelve months."

Attachment #3 – Second Notice

State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SECOND NOTICE TO DRY CLEANING FACILITIES

M RGRG <File #> DRYCLEANER
<Owner Name>
<DBA>
<Mailing Street/PO>
<Mailing CSZ>

<DBA>
<Location Street>
<Location CSZ>

TO: Dry Cleaning Facilities
FROM: South Carolina Department of Revenue
SUBJECT: Drycleaning Facility Restoration Trust Fund – Second Request
DATE: December 8, 2004

On August 26, 2004, we notified this location of the amendments to the South Carolina Drycleaning Facility Restoration Trust Fund which provides for the cleanup at drycleaning facilities of discharges of solvents which pose a threat to the environment. The South Carolina General Assembly enacted Act No. 237 which allows certain drycleaning facilities that do not currently participate in the Trust Fund another opportunity to register for the Trust Fund. As of the date of this letter, we have not had a response to our letter of August 26, 2004.

It is imperative to remember the following:

- (1) Registration or the appropriate election of non-participation is required from each "wetsite" location (facility/location that uses solvent) no later than July 1, 2005. "Dry drop-off" facilities are not required to register but should complete the Statement of Nonparticipation and return it to this office by July 1, 2005.
- (2) Your facility may be eligible to obtain cleanup funds from the Trust Fund only if you register the facility or location for the Trust Fund by July 1, 2005 and pay the appropriate fees. If you elect not to participate, you or any future owner/operator will not be eligible for any disbursement from the Trust Fund and you may be held personally liable for any clean-up costs.
- (3) In addition to the annual registration fee, participants in the Trust Fund are required to pay a solvent surcharge and an additional 1% surcharge on the gross proceeds of sales. The 1% surcharge on the gross proceeds of sales of a drycleaning facility was also enacted by Act No. 237 and was detailed in our letter of June 16, 2004. The solvent surcharge is based on the type of drycleaning solvent used by the facility. We have included definitions of the two types of solvents defined in the legislation.
- (4) If you clean with Halogenated drycleaning fluids, you must register the facility for the Trust Fund and pay the appropriate fees. You do not have the option of non-participation in the Trust Fund.

- (5) If the Drycleaning facility or location opened after July 1, 1995 and the facility/location uses solvent, you must register the facility for the Trust Fund and pay the appropriate fees, regardless of the solvent used at your location. You do not have the option of non-participation in the Trust Fund.

We have enclosed two forms for your convenience:

(1) Statement of Nonparticipation - Permanent election form for those facilities that have the option of participation/non-participation; and

(2) Form L-2093 - Drycleaning Facility Registration Form for those facilities that are required to participate in the Fund or those facilities that wish to voluntarily participate. The annual registration fees are based on the number of employees of the participating drycleaning facilities. The fee schedule is as follows:

\$750.00	- Up to four (4) employees
\$1500.00	- Five (10) to ten (10) employees
\$2250.00	- Eleven (11) or more employees

Participation in the Fund:

If you have elected to not participate in the Fund in the past, this new legislation may afford you an opportunity to voluntarily participate in the Fund by paying all back fees by July 1, 2006. To determine if you are currently eligible to join the Fund, you may contact the DHEC within the next sixty days at 1-866-343-2379 (toll-free).

Each facility and/or location must notify the South Carolina Department of Revenue of their election. If you are required to participate in the Trust Fund or, if qualified, you voluntarily elect to participate in the Fund, you should complete the Form L-2093 in its entirety and return it to the address below no later than July 1, 2005. The appropriate fee will be due for each year the location has been in existence as a drycleaning facility. If you elect to not participate in the Fund and you are eligible to do so, you should complete the Statement of Non-participation and return it to the address listed within 30 days of this letter.

Please mail the completed Statement of Nonparticipation or the Registration Form with appropriate fee(s) to:

SOUTH CAROLINA DEPARTMENT OF REVENUE
REGISTRATION SECTION
COLUMBIA SC 29214-0140

If you have questions regarding this notice, please call (803) 898-5872 or your nearest South Carolina Department of Revenue Taxpayer Service Center.

rtified Letters - Dry Cleaning Tru und

<i>SID</i>	<i>Owner Name</i>	<i>Business Name</i>	<i>File Number</i>	<i>Comment</i>
<i>File Number</i>	<i>Mailing Address</i>	<i>Location</i>	<i>Signature</i>	<i>Participant ?</i>
<i>CSZ</i>	<i>CSZ</i>	<i>CSZ</i>	<i>Response Date</i>	<i>Second Letter</i>
1254678 002	ABBEVILLE CLEANERS INC	ABBEVILLE LAUNDRY	n/a	Closed
00101068 5	1109 FLORENCE ST	311 S MAIN ST	illegible	n/a
	GREENWOOD SC 296463909	ABBEVILLE SC 29620	08-31-04	
1254987 001	ABNEY ELICE P	ABNEYS CLEANERS		
04102321 2	433 TRAVIS AVE	431 TRAVIS AVE	Paul Abney	
	SALUDA SC 291381227	SALUDA SC 29138		12-29-04
1257985 002	ALLEN FRANKLYN C	UNIVERSITY CLEANERS	39120614-9	dry drop off
02357625 7	5000 OLD BUNCOMBE RD STE 12	723 SULFUR SPRINGS	Claudia Allen	non-part
	GREENVILLE SC 296178208	GREENVILL SC 29611	10-20-04	
1259213 003	AMERICAN AUTO PARTS OF CHESTER	JEFFERSON WASHERMATT	n/a	Closed
01306151 7	301 EAST BLVD	MAIN ST	Hazel Davis	n/a
	CHESTERFIELD SC 297091735	JEFFERSO SC 29718	01-11-05	12-29-04
1259213 005	AMERICAN AUTO PARTS OF CHESTER	CHERAW WASHERMAT	n/a	coin-op laundromat
01305381 1	301 EAST BLVD	W MARKET ST	Hazel Davis	n/a
	CHESTERFIELD SC 29709-173	CHERAW SC 29520	01-11-05	12-29-04
1262622 000	SHAW ENTERPRISES INC	ARNOLDS PROFESSIONAL CLEANERS	39120089-5	Dry Drop Off
04038361 9	1601 LEESBURG RD	400 S BELTLINE BLVD	Gerald Dyson	non-part
	COLUMBIA SC 292092215	COLUMBIA SC 29205	08-30-04	
1262623 000	ARNOLDS PROFESSIONAL GARMENT C	ARNOLDS PROFESSIONAL GARMENT CA		
04034305 7	101 SUNBELT BLVD	7813 ST ANDREWS RD	Neil Freeman	
	COLUMBIA SC 292032617	COLUMBIA SC 29210		12-29-04